

PETITIONER:
ASSOCIATION OF SELECTED CANDIDATES OF 38TH COMBINED

Vs.

RESPONDENT:
BIHAR PUBLIC SERVICE COMMISSION & ORS.

DATE OF JUDGMENT: 31/10/1996

BENCH:
S.C. AGRAWAL, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.C. AGRAWAL, J.

These appeals are directed against the judgment of the Patna High Court dated January 16, 1995 in C.W.O.C.Nos. 4504 and 4180 of 1994 relating to the 38th Combined Competitive (Main) Examination conducted by the Bihar Public Service Commission (hereinafter referred to as 'the Commission') for making selection for appointment to the civil services in the State of Bihar.

The combined Competitive Examination conducted by the Commission in two parts. There is a Preliminary Examination for all the applicants and those who qualify in the preliminary examination which is followed by viva voce test. Prior to the 37th examination, of the Commission was adopting the system of evaluation of the answer books by outside examiners and for that purpose answer books were sent to the examiners outside the State. Before the Commencement of the 37th examination, the Chairman of the Commission decided to introduce the system of centralised evaluation of answer books.

The said system of centralised evaluation of answer books was assailed in a writ petition filed before the Patna High Court (Sanjay Kumar & Ors vs. The main ground of attack which was accepted by the High Court, was that the decision regarding change of mode of evaluation had been taken by the Chairman alone and not by the Commission and that the Chairman was not competent to take such a decision and it could be taken only by the Commission, i.e.. the Chairman and all the members. Taking note of the fact that major and substantial role regarding taking of decisions was left in hands of the chairman and that over the years no member ever objected to the conduct of examination in this manner and at the time of the 37th examination also no member, save one, raised any objection or made any protest regarding the manner and mode in which the decisions regarding the conduct of the examination were being taken by the Chairman, the High Court held that the Commission had adopted this as the matter of conduct of examinations. The High Court, therefore, did not interfere with the result of the 37th examination. at the same time, the High Court directed the

Commission to evolve a procedure for the conduct of examinations which must be both reasonable and in conformity with law and that rules be framed for ensuring that the entire body of the Commission fully participate in the decision making process on basic issues and policy matters, As regards the centralised evaluation system the High Court has observed that the reasons cited for introducing the system were indeed good and valid and one could not find any fault with them but in the concluding remarks the High Court expressed the view that "the Commission will be well advised to once again consider the question of sending the answer books to the examiners outside the State of Bihar as this process seems to evoke greater confidence and keeps the Commissions' examinations free from any controversy"

The said decision in Sanjay Kumar case (supra) was given on June 11, 1992 and by that time the process for conducting the 38th combined Competitive Examination had commenced. The Preliminary examination had been held on May 24, 1992 and the result of the said examination was declared on July 17/18/1992. The written part of the Main examination was delayed on account of filing of writ petitions by unsuccessful candidates in the Patna High Court against the result of the preliminary examination. The writ petitions were disposed of by the High Court on July 29, 1993. Thereafter, on August 16, 1993, the Commission decided that the Main (written) examination would commence with effect from September 20, 1993 at Patna and Ranchi centres and that "the Question Setter/Moderators/Examiners should be of Professor/Reader rank and should be from outside the State and whose names figure in the UGC Handbook or Handbook of Association of the University Teachers and the Panel thereof should be put up before the Commission for approval".

The matter of evaluation of answer books connected with the 38th Combined Competitive (main) Examination was further considered by the Commission at its meeting held on September 18, 1993 and it was decided to adopt the system of centralised evaluation at the office of the Commission under the strict vigilance of the. In the said meeting it was also decided that the selection of examiners and head-examiners be made from among the Readers and Professors whose names figure in the Handbook of Teachers Published by the University Grants Commission and by the Association of University Teachers available in the commission's office and that a list of such teachers prepared by the Secretary will be approved with necessary changes indicated therein. It was also decided to make utmost efforts to get such examiners and head-examiners more and more and more from outside Bihar and in case of non-availability they should be replaced from among the persons from Bihar and who also figure in those Handbooks and who are of eminence and who have been associated with various commission's working and that the Secretary/officer on Special Duty incharge examinations will ensure that examiners/head-examiners invited for evaluation should not be involved in any misconduct previously. The said meeting of the Commission held on September 18, 1993 was attended by the Chairman and six members of the Commission out of whom the Chairman and four members voted in favour of the Resolution and two members expressed their dissent.

On October 5, 1993, the officer on Special Duty (OSD) submitted a note regarding the holding of centralised evaluation. The said note was circulated among the members. On such circulation, Shri Shiv Jalan Thakur and Sri B. Ram, the two members who had dissented at the meeting held on

September 18, 1993, reiterated their view opposing the centralised evaluation system. Shri S. Singh, who had supported the Resolution reiterated his view. Shri K.P. Singh, who also had supported the Resolution, expressed the view that since there is sharp division among the members over the issue, it would be wise to get the papers evaluated by the examiners outside the State and he suggested that meeting of the commission be held to discuss the issue in the light of the note of the OSD, Shri S.N. Singh, who also had voted in favour of the Resolution, suggested that the matter be placed before the full Commission. Smt. C.B. Devi stated that although in the meeting held on September 18, 1993 she was in favour of the centralised evaluation. but in view of the controversy, the matter be placed before the Commission again. Shri Karma Oraon, who did not attend the meeting held on September 18, 1993, suggested that the Commission should meet and deliberate upon the issues raised by OSD. Shri S.S. Mashhadi and Shri Saryu Prasad, who also had not attended the meeting held on September 18, 1993, agreed with the view of Shri K.P. Singh and opined that the matter be discussed by the Full Commission. A meeting of the Commission was held on November 3, 1993. In the said meeting the Bihar Public Service Commission rules of Procedure 1993 (hereinafter referred to as the Rules of Procedure') were adopted by majority. Rule 3 of the said rules made provision for allocation of the business of the Commission. In the said rule it was provided that the business of the Commission shall be transacted either by the Commission or by one or more members including the Chairman as specified in the Schedule appended to the rules, It was further laid down that the Chairman may, if he considers necessary or expedient to do so in public interest, direct that any particular matter or business be placed before the Commission for disposal and that any other business of the Commission not specified in the Schedule shall be transacted by the Commission. Clauses (viii) to (xi) of Rule a made the following provisions :-

"A (viii), For appointment as question setters, moderators and examiners for evaluation of answer books the Officer on Special Duty incharge of Examinations shall prepare a panel of teachers who have put in at least ten years of service in a Constituent/Government College or five years in a post-graduate Department and place it for approval before a Committee consisting of the Chairman and two Members nominated by hem.

(ix) The Officer on Special Duty incharge of Examinations shall, with the prior approval of the Chairman, appoint paper setters, moderators and examiners from the panel approved vide Sub-Rule (viii) of Chapter III.

(x) In making such appointments every care should be taken to ensure that on such person is appointed as was found guilty of misconduct of any University Government or Government Body or against whom any enquiry or investigation may be pending on

allegation of misconduct or whose integrity is in doubt, Any person whose work as Head examiner, Paper Setter or Moderator is found to be unsatisfactory by the Commission shall not be re-appointed for that purpose.

(xi) Notwithstanding anything contained heretofore evaluation of answer books, the Commission may decide for centralised evaluation in the premises of the Bihar public Service Commission. In such eventuality, the Chairman is hereby authorised to take appropriate steps in accordance with the guidelines prescribed for the selection of examiners."

The OSD submitted a Note on November 9, 1993 wherein he referred to the Rules of Procedure and suggested that a Committee may be constituted for approval of the list of examiners, On November 23, 1993, he submitted two Notes stating that the office had prepared a new list of examiners and a list had also been received from the Universities of Bihar, Muzaffarpur and Patna. On November 23, 1993, the Chairman approved the panel of examiners/hear-examiners as prepared by the office and also the panel sent by the Vice Chancellors of the three universities aforementioned. The evaluation of answer books commenced on November 28, 1993 in the premises of the Commission by the examiners so appointed. The result of 38th Main written examination was declared on April 27, 1994 and 657 candidates, who were declared successful, were required to appear for viva voce test which was to commence from May 14, 1994. In the meanwhile a writ petition (C.W.J.C.No. 4180 of 1994) was filed in the High Court wherein it was prayed that the result of the 38th Combined Competitive (Main) Examination may be quashed and that the Commission be directed to send the answer books of the said examination for evaluation by the examiners outside the State of Bihar, On May 28/29, 1994 the Commission declared the final list of successful candidates for appointment on various posts. Thereafter another writ petition (CWJC No.4504 of 1994) was filed in the High Court.

In both the writ petitions the decision of the Commission for having centralised evaluation of answer books as well as the decision regarding appointment of examiners for the purpose of such evaluation were challenged. The writ petitions have been allowed by the High Court by the impugned judgment. The High Court has held that the process of taking the decision to have centralised evaluation as well as its implementation were bad and as a result the entire evaluation process has been rendered illegal and arbitrary. The High Court has directed the Commission to get the answer books of the 38th Combined Competitive (Main) Examination evaluated afresh by sending them for evaluation outside the State.

The High Court has emphasised that the earlier decision of the Commission dated August 16, 1993 for having the answer books examined by the examiners from outside the State, had been taken unanimously at the meeting of the Commission which was attended by the Chairman and eight out of nine members. As regards the decision taken on September 18, 1993, the High Court has observed that the said meeting was attended by Chairman and six members and out of them

while the Chairman and four members were in favour of the decision, two members had dissented and that after the said decision had been taken the matter had been circulated and almost the whole Commission except two including the Chairman wanted a fresh consideration in the light of the difficulties pointed out by the OSD, The High Court has observed that when the majority of the members were against centralised evaluation and had desired further debate and discussion the Chairman had no option but to convene a meeting of the Full Commission and try for a consensus but nothing appears to have been done for full one month. The High Court has also referred to the fact that after the minutes of Smt. C.B. Devi dated October 8, 1993 the file appears to have disappeared until November 9, 1993 when the OSD submitted his note regarding approval of the list of examiners. According to the High Court the conduct of the Chairman in pre-empting any discussion and getting centralised evaluation done in the circumstances verges on mala fide. As regards the appointment of examiners the High Court has held that as per the decisions of the commission dated August 16, 1993 and September 18, 1993 the examiners were to be of the rank of Professor/Reader from outside the State whose names figure in the UGC Handbook or the Handbook of Association of University Teachers and that Shri ram Rattan Singh, one of the examiners, does not figure in the Handbook and the cannot claim to be of the rank of Professor/Reader and there may be such several types of persons who evaluated the answer books. While dealing with the stand of the Commission that the answer books had been evaluated by teachers of constituent/government colleges having ten years teaching experience or a teacher having five years teaching experience in postgraduate department, the High Court has observed that the said stand is virtually a quotation of Chapter III rule 4(viii) of the Rules of Procedure and that besides being a bald omnibus stand, factually did not appear to be true. According to the High Court the circumstances in which the office prepared the list of examiners during the interregnum between October 8 and November 9, 1993, when the file had virtually disappeared were suspicious. The High Court has further observed that there was nothing on the record to suggest that the teachers of the rank of Professor/Reader, as mentioned in the Handbooks were not available for evaluation, they might not be available for evaluation of answer books at Patna within the premises of the Commissions but surely they have been available at their respective places provided These answer books had been sent outside.

Feeling aggrieved by the judgment of the High Court the Commission has filed C.A.Nos. 3102-3103 of 1995 and the selected candidates have filed C.A.Nos.3104-3106 of 1995.

The High Court has annulled the evaluation of the answer books for Main Written Examination for two reasons: (i) the process of taking the decision to hold centralised evaluation was bad and (ii) the appointment of examiners was not made in accordance with the decision taken by the Commission on August 16, 1993 and September 18, 1993.

As regards the adoption of the system of centralised evaluation of the answer books it is no doubt true that in Sanjay Kumar (supra) the High Court had expressed the view that the Commission would be well advised once again to consider the question of sending the answer books to the examiners outside the State of Bihar as this process seems to evoke greater confidence and keeps the Commissions examinations free from any controversy. But in the said case the High Court has also observed that so far as the

introduction of centralised system of evaluation was concerned, the reasons assigned for the same were indeed good and valid and one could not find any fault with them. The only fault that was found by the High Court in the decision to have centralised evaluation was that it had not been taken by the Commission but was taken by the Chairman alone and that such a decision should have been taken by the Commission. After the said judgment in Sanjay Kumar (supra) the matter was considered by the Commission at its meeting held on August 16, 1993. It was decided that the Question Setters/Moderators/Examiners would be of Professor/Reader rank and should be from outside the State. The matter of evaluation was again considered by the Commission at the meeting held on September 18, 1993. The proceedings of the said meeting, which were placed before the High Court, have been placed before us. The said proceedings show that the Commission took into consideration the fact that there would be about 1.5 lakhs answer books and that the gigantic work of despatching the same to different destinations would cause inordinate delay in declaring the result which had already been delayed on account of prolonged litigation and there would be disruption of schedule of competitive examinations and it would also aggravate the suffering among the unemployed youths who had the taste of bitter suffering because of discomfiture of overage. In the said meeting the following points surfaced prominently for discussion:-

"(a) Whether the Commission can opt for centralised evaluation at the Commission's office under a foolproof system where there is no scope of leakage and consequential allegation on that account in order to save time likely to be consumed in despatch of the answer books to various destinations outside Bihar and their arrival back at the office of the Commission.

(b) Whether the option of the Commission will not be in derogation of the observations of the Hon'ble Patna High Court given in C.W.J.C.No.1192/92 concerning 37th Combined Competitive Examination wherein the Commission has been well-advised to send the answer books outside Bihar to avoid any allegation in future.

(c) Whether it is incumbent upon this Commission to evolve any best device in the circumstances which not only avoids chances of genuine allegation but mitigates the suffering of the unemployed youths who by such inordinate delay have already become restive and are always found hogging around in the Commission's campus for immediate remedial measures.

(d) In the event of Commission contemplating to go in favour of centralised evaluation, how best of the examiners and hear-examiners be drawn from the academic world and what best criteria be prescribed for their selection.

(e) Any other arrangement the Commission considered appropriate as incidental and consequential."

After considering all the pertinent aspects of the matter the Commission decided to adopt the system of centralised evaluation at the office of the Commission under strict vigilance of the Chairman and members nominated by the Commission. The Commission took note of the fact that there had not been any comment over the system of centralised evaluation adopted during the 37th Combined Competitive Examination and, therefore, decided that the same system with necessary changes and ensuring fuller involvement of the Members be adopted for evaluation of answer books connected with the 38th Combined Competitive (Main) Examination. The Commission reiterated its earlier decision dated August 16, 1993 that selection of examiners and head-examiners be made from among the Readers and Professors whose names figure in the Handbooks of Teachers published by the UGC and by the Association of University Teachers available in the Commission's office and that a list of such teachers prepared by the Secretary will be approved with necessary changes indicated therein. The Commission also decided to make utmost efforts to get such examiners and head examiners more and more from outside Bihar and in case of non-availability they should be replaced from among persons from Bihar and who also figure in these Handbooks and who are of eminence and have been associated with various Commissions' working and that the Secretary/officer on Special Duty in charge examinations will ensure that examiners/head-examiners invited for evaluation should not be involved in any misconduct previously. The meeting held on September 18, 1993 was attended by the Chairman and six members out of whom the Chairman and four members voted in favour of the Resolution and two members expressed their dissent. But that does not affect the validity of the decision which was adopted by majority of the members present at the meeting. The fact that subsequently when the note dated October 5, 1993 submitted by the Officer on Special Duty was circulated majority of the members felt that the matter may be reconsidered by the full Commission, does not mean that the decision taken at the meeting held on September 18, 1993 stood nullified. The said decision could be rescinded only by a resolution adopted at a properly convened meeting of the Commission. Since no such resolution was passed the decision taken at the meeting held on September 18, 1993 remained in force. The centralised evaluation of answer books for 38th Combined Competitive (Main) Examination on the basis of the said decision cannot, therefore, be held to be vitiated by any legal infirmity.

The conduct of the Chairman of the Commission in not convening a meeting of the Full Commission to reconsider the decision dated September 18, 1993 for introducing centralised evaluation has been adversely commented upon by the High Court and it has been observed that it verges on mala fide. We are unable to endorse these observations. As mentioned earlier in Sanjay Kumar (supra) the High Court had not found any fault with the centralised evaluation system that was introduced by the Chairman for the 37th Combined Competitive Examination. In the impugned judgment also the High Court has observed:-

"I should not be understood as condemning outright the system of centralised evaluation. Materials have not been produced before us

either in its favour or against it.
I am not aware of the recent trends
in the field of public
administration in this regard."

The comments of the Members on the note of OSD under circulation were made on October 7 and 8, 1993 Prior to that the Main Written Examination had commenced on September 20, 1993. In the circumstances, the Chairman could have reasonably proceeded on the basis that since the written examination has already commenced it may not be appropriate to reopen the matter of evaluation of answer books and the same may be done in accordance with the decision already taken on September 18, 1993. Moreover the matter did come up for consideration before the Commission on November 3, 1993 when the Rules of Procedure were adopted. The Commission, instead of reconsidering the decision dated September 18, 1993 regarding centralised evaluation of answer books, approved Rule 4(xi) which enables adoption of centralised evaluation in the premises of the Commission. The Members, if they so wanted, could have disapproved the said provision and could have reviewed the decision regarding centralised evaluation taken on September 18, 1993. They did not choose to do so.

As regards the comment made by the High Court that the file had disappeared after the note of Smt.C.B. Devi dated October 8, 1993 Dill November 9, 1993, Shri Kapil Sibal, the learned senior counsel appearing for the Commission, has pointed out that the two writ petitions (CWJC Nos.7203 and 8049 of 1992) filed in the Patna High Court by the candidate who were unsuccessful in the Preliminary Examination wherein they had prayed for quashing of the results of the said examination were dismissed by the High Court by judgment dated July 29, 1993 and Special Leave Petition (C) No. 15178/93 was filed by the Association of Civil Service Examinees against the said decision in this Court. In the said Special Leave Petition this Court, on October 8, 1993, had issued notice to the Commission and granted time for filling counter affidavit. It is stated that the original file was sent to the counsel of the Commission in Delhi for preparing the counter affidavit in the said special leave petition. There was thus nothing mysterious about the file not being available in the office of the Commission during the period from October 8 to November 9, 1993 and the High Court was in error in drawing an adverse inference therefrom.

There is no material on the record which may indicate that the Chairmen, in not having the matter of centralised evaluation reconsidered by convening a meeting of the full Commission between October 8, 1993 and November 3, 1993 was actuated by any extraneous consideration. In the circumstances, the observation by the High Court that the conduct of the Chairman in this regard verges on mala fide cannot be upheld and has to be set aside.

The appointment of examiners was made by a committee of two members nominated by the Chairman along with that Chairman out of the list submitted by the OSD. The High Court had found fault with the appointment of examiners by referring to the appointment of Shri Ram Rattan Singh, retired Chief Inspector of Weights and Measures who is said to have evaluated the Agriculture paper. It is stated that he does not figure in the Handbook and he cannot claim to be of the rank of Professor/Reader. On behalf of the Commission it has been pointed out that Shri Ram Rattan Singh holds a Ph.D. degree in Agricultural Economics from Ohio State in USA and has worked as Professor and Head of the Department

in Ranchi Agricultural University and as Professor of Agricultural Economics at Ranchi College of Agriculture for more than 10 years and has guided several students in their research and preparation for obtaining Ph.D. degree. It cannot, therefore, be said that Shri Ram Rattan Singh was not of the rank of Professor. The High Court has also commented on the circumstances in which the office prepared the list of examiners between the period of interregnum between October 8 and November 9, 1993 when the file is said to have disappeared. We have already dealt with this aspect of the case and have found that there was nothing mysterious in the file being not available in the office from October 8 to November 9, 1993.

Shri S.B. Sanyal, the learned senior counsel appearing for the respondents, has submitted that the appointment of the examiners was done virtually by the Chairman because the committee of two members which was associated in the matter had been nominated by the Chairman himself. The submission is that the appointment of the examiners should have been made by the Full Commission. Reliance has been placed on the decision of this Court in *Naraindas Indurkha vs. State of M.P. & Ors.* (1974) 3 SCR 624. There is no merit in this contention. In a multi-member body, like the Commission, it may not be feasible for every member to associate personally and directly with decision making in respect of every matter. It would, therefore, be permissible to constitute committees of members or authorise a member to consider the manifold matters which any come up for consideration before the Commission. This is what has been done by the Rules for Procedure that were adopted on November 3, 1993. In Rule 3 provision was made regarding allocation of business of the Commission. It was provided that the business of the Commission shall be transacted either by the Commission of one or more members including the Chairman as specified in the Schedule appended to the rules. With regard to appointment of examiners express provision was contained in Rule 4(viii) which prescribed that the said appointment shall be made on the basis of a panel approved by a committee consisting of Chairman and two Members nominated by him. The examiners were appointed in accordance with the aforesaid provision in the Rule of Procedure.

In *Narayandas* (supra) the Court was dealing with the question whether a notification prescribing the textbooks has been rightly issued by the State Government in accordance with the provisions of section 4 (1) of the *Madhya Pradesh Prathamik Middle School Tatha Madhyamik Shiksha (Pathya Pustaken Sambandhi Vyavastha) Adhiniyam, 1973* which required prior consultation with the Board of Secondary Education. In that case the matter had not been considered by the Board and the Chairman of the Board had made the recommendations on the basis of which the impugned notification had been issued. It was held that the recommendations made by the Chairman of the Board, by himself, could not be regarded as recommendations by the Board. It was, however, observed :-

"Now we do not dispute the general proposition that when a power or function is given by the statute to a corporate body and no provision is made in the statute as to how such power or function shall be exercised, the corporate body can by a resolution passed at a general meeting devise its exercising such power or function, such as

authorising one or more of the members to exercise it on behalf of the Board."

The said observations lend support to the submission urged on behalf the Commission that under the Rules of Procedure adopted by the Commission on November 3, 1993 the power regarding appointment of examiners had been assigned to a committee consisting of the Chairman and two members to be nominated by the Chairman. It cannot therefore be said that the appointment of examiners suffers from any legal infirmity.

For the reasons aforementioned the impugned judgment of the High Court cannot be upheld and has to be set aside. The appeals are, therefore, allowed the impugned judgment of the High Court is set aside and the writ petitions filed before the High Court are dismissed. But in the circumstances, there will be no order as to costs.